

AMENDED IN SENATE APRIL 17, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 476

Introduced by Senator Steinberg

February 21, 2013

An act to repeal and add Sections 1872.81, 1874.8, and 10127.17 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 476, as amended, Steinberg. Insurance: special assessments.

(1) Existing law, until January 1, 2015, imposes on an insurer a \$0.30 special purpose assessment on each vehicle insured under an insurance policy issued in this state by the insurer. Existing law specifies that \$0.20 of each \$0.30 special purpose assessment shall be used to fund specified consumer service functions of the Department of Insurance relating to motor vehicle insurance. Existing law further specifies that the remaining \$0.10 of each \$0.30 special purpose assessment shall be used to fund the improvement of certain consumer functions of the department.

This bill would revise and recast those provisions, delete the date of repeal, and require a special purpose assessment of \$0.25 until January 1, 2015, and not exceeding \$0.25 thereafter, on each vehicle insured under an insurance policy issued in this state by the insurer. The bill would also specify that, upon appropriation, $\frac{2}{3}$ of the special purpose assessment be used for the purpose of funding the consumer service functions of the department related to regulating automobile insurers, as provided, and $\frac{1}{3}$ of the special purpose assessment be used for the purpose of improving consumer functions of the department, related to regulating automobile insurers, as specified.

The bill would authorize the department, upon appropriation by the Legislature, to use up to \$0.05 of the \$0.25 special purpose assessment revenues collected to notify insurers and other members of the public about the existence of any low-cost automobile insurance program.

(2) Existing law provides that each insurer doing business in this state shall pay an annual special purpose assessment to be determined by the Insurance Commissioner, but not to exceed \$0.50 annually for each vehicle insured under an insurance policy the insurer issues in this state, in order to fund the Fraud Division and the Organized Automobile Fraud Activity Interdiction Program. Under existing law, of the funds collected, 42.5% are required to be distributed to district attorneys, 42.5% are required to be distributed to the department's Fraud Division, and 15% are required to be distributed to the Department of the California Highway Patrol, to be used as provided. Existing law provides that this assessment be repealed on January 1, 2015.

This bill would revise and recast those provisions, delete the date of repeal, and make the distribution of funds by the commissioner upon appropriation by the Legislature.

(3) Existing law creates the Life and Annuity Consumer Protection Fund as a special account within the Insurance Fund. ~~Existing law, and, until January 1, 2015,~~ requires each insurer admitted to transact insurance in this state to pay a fee determined by the commissioner, not to exceed \$1, for each individual life insurance policy and each individual annuity product that it issues to a resident of this state with a value of \$15,000 or more. If an insurer elects to charge the purchaser of a life insurance policy or annuity product this fee, the fee is required to be set forth as a separate charge in the contract schedule or premium notice. The moneys in the Life and Annuity Consumer Protection Fund are to be distributed, as provided, and are required to be used exclusively for the purpose of protecting consumers of life insurance and annuity products in this state. Existing law requires that 50% of the moneys in the fund be distributed within the department for functions related to individual life insurance and annuity products, including, but not limited to, educating consumers in all aspects of life insurance and annuity products, consumer protection, purchasing and using insurance and annuity products, claim filing, benefit delivery, and dispute resolution.

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This bill would revise and recast those provisions, delete the date of repeal, and require that the moneys distributed by the commissioner, upon appropriation by the Legislature, fund the reasonable costs incurred

in regulating entities transacting life insurance and annuity products in this state. *The bill would delete the requirement that each individual life insurance policy and each individual annuity product have a value of \$15,000 or more in order for the special assessment to apply.* The bill would also require that instead of consumer education, the moneys in the fund distributed within the department for functions related to individual life insurance and annuity products be used to disseminate information to insurers, insureds, and others regarding the applicable regulation of life insurance and annuity products, including consumer protection, purchasing and using insurance and annuity products, claim filing, benefit delivery, and dispute resolution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Automobile insurance rates are approved by the Insurance
- 4 Commissioner, who is required to ensure that automobile insurance
- 5 is fair, available, and affordable to all Californians. Several factors
- 6 guide the commissioner's rate-setting powers, including factors
- 7 that have a substantial relationship to the risk of loss. The
- 8 California Low Cost Automobile Insurance Program makes
- 9 automobile insurance available to low-income drivers, thereby
- 10 reducing the number of uninsured motorists on California's roads.
- 11 Since the program's inception in 2005, 59 percent of those
- 12 receiving insurance coverage through the program were previously
- 13 uninsured, and the program has covered \$7.56 million in property
- 14 damage claims and \$8.5 million in bodily injury claims, directly
- 15 protecting insurers and insureds from the risk of loss associated
- 16 with the full cost of injuries and damages had those motorists
- 17 remained uninsured.
- 18 (b) The Organized Automobile Fraud Activity Interdiction
- 19 Program merges the resources of the Department of Insurance, the
- 20 Department of the California Highway Patrol, and district attorneys
- 21 to combat automobile insurance fraud, which includes the staging
- 22 of automobile accidents and the filing of fraudulent automobile
- 23 accidents or damage claims. The program provides a direct benefit

1 to insurers by prioritizing the remediation of automobile insurance
2 fraud, resulting in reduced claims costs for insurers.

3 (c) The Department of Insurance is responsible for investigating
4 violations of the Insurance Code related to life insurance policies
5 and annuity products. The role of district attorneys in prioritizing
6 the prosecution of fraudulent activities involving insurance and
7 annuity products, including the economic abuse of consumers,
8 enables the department to take prompt and decisive action to restrict
9 or terminate the licenses of persons criminally convicted of
10 financial abuse crimes. The department's regulatory purposes of
11 deterring insurance and annuity fraud are also furthered by warning
12 consumers, particularly seniors, about unsavory sales practices
13 and by helping consumers understand the types of fraudulent
14 activities being perpetrated.

15 SEC. 2. Section 1872.81 of the Insurance Code is repealed.

16 SEC. 3. Section 1872.81 is added to the Insurance Code, to
17 read:

18 1872.81. In addition to the special purpose assessment imposed
19 pursuant to Section 1872.8, an insurer doing business in this state
20 shall, until January 1, 2015, pay to the commissioner an annual
21 special purpose assessment of twenty-five cents (\$0.25), and
22 thereafter pay to the commissioner an annual special purpose
23 assessment in an amount not to exceed twenty-five cents (\$0.25),
24 as determined by the commissioner, for each vehicle insured under
25 an insurance policy it issues in this state, for expenditure, upon
26 appropriation by the Legislature, as follows:

27 (a) Two-thirds of the special purpose assessment shall be used
28 for the purpose of funding the consumer service functions of the
29 department that are related to regulating automobile insurers,
30 including those functions performed by the rating and underwriting
31 service bureau, the claims service bureau, the investigations bureau,
32 or any successor bureaus of the department that may assume the
33 consumer service functions of these bureaus, and legal services in
34 support of these bureaus.

35 (b) One-third of the special purpose assessment shall be used
36 for the purpose of improving consumer functions identified in
37 subdivision (a) of the department that are related to regulating
38 automobile insurers, including, for improving the ability of the
39 department to respond to consumer complaints and information
40 requests through the department's toll-free telephone number, and

1 for improving the ability of the department to offer information
2 about automobile insurance rates to the public.

3 (c) Upon appropriation by the Legislature, the Department of
4 Insurance may use up to five cents (\$0.05) of the special purpose
5 assessment revenues collected pursuant to this section to notify
6 insurers and other members of the public about the existence of
7 any low-cost automobile insurance program established pursuant
8 to Section 11629.7 or other statutes that establish a program of the
9 type identified in Section 11629.7. In requesting an appropriation
10 for this purpose under its proposed departmental budget submitted
11 to the Department of Finance, the Department of Insurance shall
12 explain, with as much specificity as is reasonably possible, the
13 objectives for the use of the funds and the quantitative criteria by
14 which the Legislature may evaluate the effectiveness of the
15 department's use of the funds.

16 SEC. 4. Section 1874.8 of the Insurance Code is repealed.

17 SEC. 5. Section 1874.8 is added to the Insurance Code, to read:

18 1874.8. (a) Each insurer doing business in this state shall pay
19 an annual special purpose assessment to be determined by the
20 commissioner in an amount not to exceed fifty cents (\$0.50) for
21 each vehicle insured under an insurance policy it issues in this
22 state, in order to fund the Fraud Division and the Organized
23 Automobile Fraud Activity Interdiction Program.

24 (b) (1) From the funds to be distributed to district attorneys
25 under this section, the commissioner shall fund between three and
26 10 grants at any one time for a coordinated program targeted at
27 the successful prosecution and elimination of organized automobile
28 fraud activity. These grants may be awarded only to district
29 attorneys.

30 (2) In determining whether to award a district attorney a grant
31 pursuant to this subdivision, the commissioner shall consider
32 factors indicating organized automobile fraud activity in the district
33 attorney's county, including, but not limited to, the county's level
34 of general criminal activity, population density, automobile
35 insurance claims frequency, number of suspected fraudulent claims,
36 and prior and current evidence of organized automobile fraud
37 activity. Funding priority shall be given to those grant applications
38 with the potential to have the greatest impact on reducing organized
39 automobile insurance fraud activity committed by insurers,

1 insureds, and others, and lessening the economic losses realized
2 by insurers from that fraud.

3 (3) All participants of a grant under this subdivision shall
4 coordinate their efforts and work in conjunction with the Fraud
5 Division, other participating agencies, and all interested insurers
6 in this regard.

7 (c) Of the funds collected pursuant to this section, upon
8 appropriation by the Legislature, 42.5 percent shall be distributed
9 to district attorneys, 42.5 percent shall be distributed to the Fraud
10 Division, and 15 percent shall be distributed to the Department of
11 the California Highway Patrol. Funds distributed pursuant to this
12 section to the Fraud Division and to the Department of the
13 California Highway Patrol shall be used to fund Fraud Division
14 and Department of the California Highway Patrol investigators to
15 work in conjunction with district attorneys who are awarded grants.
16 Each grantee shall be notified by the Fraud Division of the identity
17 of the investigators assigned to work with the grantee. Each grantee
18 shall provide the Fraud Division with any information requested
19 by the division relative to a prosecution prior to filing a case. This
20 section does not prohibit the referral of any cases developed by
21 the Fraud Division to any appropriate prosecutorial entity.

22 (d) A grant under this section shall be awarded on the basis of
23 a single application for a period of three years and shall be subject
24 where applicable to the requirements of subdivision (b) of Section
25 1872.8, except for the requirement that grants be awarded according
26 to population. Continued funding of a grant shall be contingent
27 upon a grantee's successful performance, as determined by an
28 annual review by the commissioner. The Department of the
29 California Highway Patrol shall submit to the commissioner, for
30 informational purposes only, an annual report on its expenditure
31 of funds under this section in the same format as is required of
32 grantees under this section.

33 (e) Two or more district attorneys may submit a joint application
34 for a grant award under this section.

35 (f) The Fraud Division shall report to the Governor, the
36 Legislature, and to the committees of the Senate and Assembly
37 having jurisdiction over insurance on the results of the grant
38 program established by this section, including funding distributed
39 to the Department of the California Highway Patrol in the annual
40 report submitted pursuant to Section 12922.

(g) For purposes of this section, “organized automobile fraud activity” means two or more persons who conspire, aid and abet, or in any other manner act together, to engage in economic automobile theft as defined in subdivision (f) of Section 1872.8, or to violate any of the following sections in a manner that involved an automobile insurance claim:

- (1) Section 650 or 6152 of the Business and Professions Code.
- (2) Section 750.
- (3) Section 549, 550, or 551 of the Penal Code.

SEC. 6. Section 10127.17 of the Insurance Code is repealed.

SEC. 7. Section 10127.17 is added to the Insurance Code, to read:

10127.17. (a) The Life and Annuity Consumer Protection Fund is hereby created as a special account within the Insurance Fund. Each insurer admitted to transact insurance in this state shall pay a fee to be determined by the commissioner, not to exceed one dollar (\$1), for each individual life insurance policy and each individual annuity product that it issues to a resident of this state ~~with a value of fifteen thousand dollars (\$15,000) or more~~. If an insurer elects to charge the purchaser of a life insurance policy or annuity product this fee, the fee shall be set forth as a separate charge in the contract schedule or premium notice. Life insurance or annuity forms are not required to be filed again for review as a consequence of this provision. The revenue from this fee shall be deposited into the Life and Annuity Consumer Protection Fund.

(b) Moneys in the Life and Annuity Consumer Protection Fund shall be distributed by the commissioner, upon appropriation by the Legislature, to fund the reasonable costs incurred in regulating entities transacting life insurance and annuity products in this state. Moneys in the fund shall not be used for any other purpose.

(c) Fifty percent of these funds shall be distributed within the department for functions related to individual life insurance and annuity products, including, but not limited to:

(1) Investigating and prosecuting financial abuse by insurance licensees, or persons holding themselves out to be insurance licensees, or any person purporting to be engaged in the business of insurance.

(2) Responding to consumer inquiries and complaints related to life insurance or annuity products.

1 (3) Disseminating information to insurers, insureds, and others
2 regarding the applicable regulation of life insurance and annuity
3 products, including consumer protection, purchasing and using
4 insurance and annuity products, claim filing, benefit delivery, and
5 dispute resolution.

6 (4) Regulating and overseeing life insurance and annuity
7 products and advertising for these products directed toward
8 consumers.

9 (d) Fifty percent of the funds shall be distributed to district
10 attorneys for investigating and prosecuting individual life insurance
11 and annuity product financial abuse cases involving insurance
12 licensees, or persons holding themselves out to be insurance
13 licensees, or any person purporting to be engaged in the business
14 of insurance, and for other projects beneficial to insurance
15 consumers.

16 (1) The commissioner shall distribute funds to district attorneys
17 who are able to show a likely positive outcome that will benefit
18 consumers in the local jurisdiction based on specific criteria
19 promulgated by the commissioner. Each local district attorney
20 desiring a portion of those funds shall submit to the commissioner
21 an application, including, at a minimum all of the following:

22 (A) The proposed use of the moneys and the anticipated
23 outcome.

24 (B) A list of all prior relevant cases or projects and a copy of
25 the final accounting for each. If cases or projects are ongoing, the
26 most recent accounting shall be provided.

27 (C) A detailed budget, including salaries and general expenses,
28 and specifically identifying the cost of purchase or rental of
29 equipment or supplies.

30 (2) Each district attorney that receives funds pursuant to this
31 section shall submit a final detailed accounting at the conclusion
32 or closure of each case or project. For cases or projects that
33 continue longer than six months, interim accountings shall be
34 submitted every six months, or as otherwise directed by the
35 commissioner.

36 (3) Each district attorney that receives funds pursuant to this
37 section shall submit a final report to the commissioner, which may
38 be made public, as to the success of the case or project conducted.
39 The report shall provide information and statistics on the number
40 of active investigations, arrests, indictments, and convictions. The

1 applications for moneys, the distribution of moneys, and the annual
2 reports shall be public documents.

3 (4) Notwithstanding any other provision of this section,
4 information submitted to the commissioner pursuant to this section
5 concerning criminal investigations, whether active or inactive,
6 shall be confidential.

7 (5) The commissioner may conduct a fiscal audit of the programs
8 administered under this subdivision. This fiscal audit shall be
9 conducted by an internal audit unit of the department. The cost of
10 any fiscal audits shall be paid for from the Life and Annuity
11 Consumer Protection Fund established by this section.

12 (6) If the commissioner determines that a district attorney is
13 unable or unwilling to investigate or prosecute a relevant financial
14 abuse case, the commissioner may discontinue distribution of funds
15 allocated for that matter and may redistribute those funds to other
16 eligible district attorneys.

17 (e) If, as of June 30 of any calendar year, the total amount in
18 the Life and Annuity Consumer Protection Fund exceeds five
19 million dollars (\$5,000,000), the commissioner shall reduce the
20 amount of the assessment accordingly for the following year to
21 eliminate that excess. An insurer, upon receipt of an invoice, shall
22 transmit payment to the department for deposit in the Life and
23 Annuity Consumer Protection Fund. Any balance remaining in
24 the Life and Annuity Consumer Protection Fund at the end of the
25 fiscal year shall be retained in the account, to be available in the
26 next fiscal year.

27 (f) The commissioner may develop guidelines for implementing
28 or clarifying these provisions, including guidelines for the
29 allocation, distribution, and potential return of unused funds. The
30 commissioner may, from time to time, issue regulations for
31 implementing or clarifying these provisions.

32 (g) The commissioner shall provide a consolidated report
33 annually on the department's Internet Web site, which shall
34 include, but is not limited to, the following information:

35 (1) The number of opened consumer complaints related to life
36 insurance or annuity products.

37 (2) The number of opened investigations related to life insurance
38 or annuity products.

39 (3) The number of investigations related to life insurance or
40 annuity products referred to and reported by prosecuting agencies.

1 (4) The number of administrative or regulatory cases related to
2 life insurance or annuity products referred to the department's
3 legal division.

4 (5) The number of administrative or regulatory enforcement
5 actions taken in cases related to life insurance or annuity products.

6 (6) Descriptions of efforts by the department to disseminate
7 information to insurers and others regarding the applicable
8 regulation of life insurance and annuity products, including
9 consumer protection, purchasing and using insurance and annuity
10 products, claim filing, benefit delivery, and dispute resolution.

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